

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

**BRENDA K. LEDERMAN,**  
**Plaintiff,**

**v.**

**MICHAEL J. ASTRUE, Commissioner  
of Social Security Administration,  
Defendant.**

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**3:10-CV-1987-M (BK)**

**FINDINGS, CONCLUSIONS AND RECOMMENDATION  
OF THE UNITED STATES MAGISTRATE JUDGE**

Pursuant to the provisions of 28 U.S.C. § 636(b) and Special Order 3, this case was referred for findings, conclusions and recommendation.

**I. PROCEDURAL HISTORY**

On October 1, 2010, Plaintiff filed this social security case along with a motion to proceed *in forma pauperis*. On October 4, 2010, the Court issued a deficiency order notifying Plaintiff, who is represented by retained counsel, that the *in forma pauperis* (IFP) motion was insufficient. The order directed Plaintiff to complete and file a detailed IFP affidavit within thirty days, unless prior to that date she paid the \$350 filing fee. On November 24, 2010, the Court granted Plaintiff until December 1, 2010, to file the detailed IFP affidavit per the Court's October 4, 2010, order. As of the date of this recommendation, Plaintiff has failed to comply with the deficiency order.

**II. ANALYSIS**

Rule 41(b), of the Federal Rules of Civil Procedure, allows a court to dismiss an action *sua sponte* for failure to prosecute or for failure to comply with the federal rules or any court

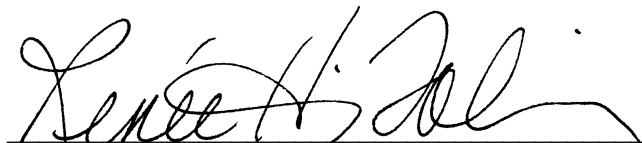
order. *Larson v. Scott*, 157 F.3d 1030, 1031 (5th Cir. 1998); *McCullough v. Lynaugh*, 835 F.2d 1126, 1127(5th Cir. 1988). “This authority [under Rule 41(b)] flows from the court's inherent power to control its docket and prevent undue delays in the disposition of pending cases.” *Boudwin v. Graystone Ins. Co., Ltd.*, 756 F.2d 399, 401 (5th Cir. 1985) (citing *Link v. Wabash R.R. Co.*, 370 U.S. 626 (1962)).

Plaintiff has been given ample opportunity to comply with the deficiency order. She and her counsel have impliedly refused or declined to do so. Therefore, this action should be dismissed without prejudice for lack of prosecution. *See* FED. R. CIV. P. 41(b) (an involuntary dismissal “operates as an adjudication on the merits,” unless otherwise specified).

### III. RECOMMENDATION

For the foregoing reasons, it is recommended that this action be **DISMISSED** without prejudice for want of prosecution pursuant to Federal Rule of Civil Procedure 41(b), and that Plaintiff’s motion for leave to proceed *in forma pauperis* (Doc. #2) be **DENIED** as moot.

SIGNED December 6, 2010.

A handwritten signature in black ink, appearing to read 'Renée H. Toliver', written over a horizontal line.

RENÉE HARRIS TOLIVER  
UNITED STATES MAGISTRATE JUDGE

**INSTRUCTIONS FOR SERVICE AND  
NOTICE OF RIGHT TO APPEAL/OBJECT**

A copy of this report and recommendation shall be served on all parties in the manner provided by law. Any party who objects to any part of this report and recommendation must file specific written objections within 14 days after being served with a copy. *See* 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 72(b). In order to be specific, an objection must identify the specific finding or recommendation to which objection is made, state the basis for the objection, and specify the place in the magistrate judge's report and recommendation where the disputed determination is found. An objection that merely incorporates by reference or refers to the briefing before the magistrate judge is not specific. Failure to file specific written objections will bar the aggrieved party from appealing the factual findings and legal conclusions of the magistrate judge that are accepted or adopted by the district court, except upon grounds of plain error. *See Douglass v. United Services Automobile Ass'n*, 79 F.3d 1415, 1417 (5th Cir. 1996).

  
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RENÉE HARRIS TOLIVER  
UNITED STATES MAGISTRATE JUDGE